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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/565,033	01/17/2006	Ebo Jacques De Muinck	S142.12-0001	7154
27367 7590 04/23/2009 WESTMAN CHAMPLIN & KELLY, P.A. SUITE 1400 900 SECOND AVENUE SOUTH MINNEAPOLIS, MN 55402				
EXAMINER				
HICKS, ROBERT J				
ART UNIT		PAPER NUMBER		
3781				
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04/23/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/565,033

Applicant(s)

DE MUINCK, EBO JACQUES

Examiner

ROBERT J. HICKS

Art Unit

3781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 March 2009.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 9-16 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-7 and 9-16 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 17 January 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 1/15/2009, 3/3/2009
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

Priority

1. Acknowledgment is made of applicant's withdrawal of claim for priority under 35 U.S.C. 119(a)-(d) based upon a notification filed on March 3, 2009. The notification states the withdrawal of the claim to foreign priority of application PCT/NL2003/000533, and the withdrawal date of March 1, 2005.

Information Disclosure Statement

2. The information disclosure statements (IDS) submitted on January 15, 2009, and March 3, 2009 were filed after the mailing date of the non-final rejection filed December 4, 2008. The submissions are in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statements are being considered by the examiner.

Claim Rejections - 35 USC § 103

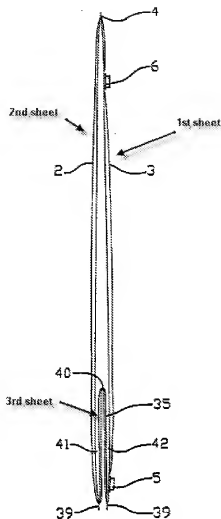
3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

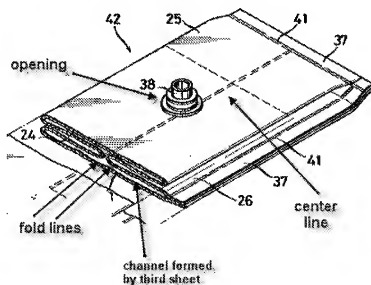
1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
5. **Claims 1-2, 7, and 9-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Olson (6,032,818) in view of Aoyama (Great Britain Application No. 2,117,736).**
6. Regarding Amended Claims 1 and 14, the patent to Olson – a liner and container combination – discloses a method for using plus a container (11) and an empty bag (1) that can be unfolded from a flat state to a filled final state (Figs. 9a and 9f); wherein the container has a walled enclosure, a base, and a peripheral wall to define a container chamber; wherein the bag comprises a first, second, third, and fourth wall; wherein the first sheet is joined to the second sheet via the third and fourth sheet; wherein, the third and fourth sheet are folded along a fold line (Fig. 3); wherein; in the flat state the fold lines of the third and fourth sheet are between the first and second sheet facing one another; and the first sheet has a first opening (5) for emptying the bag, and the first sheet has a second opening (6) for filling the bag; with the dimensions of the filled bag as being the same as the dimensions of the container (Fig. 9f), wherein the flat empty bag (1) is first fixed by the first and second fixing (26, 31) against the walled enclosure of the container chamber and only then is the bag filled with a filling via the second opening (6, Col. 5 Lines 40-43).



Olson does not expressly disclose a fourth sheet that forms a fourth wall, or fold lines of the third and fourth sheets that extend in the height direction of the container, or wherein the fold line of the third sheet in the initial state extends underneath the first opening to form a channel between the first and second sheet past the first opening. However, the publication to Aoyama – a bag-in-box container – discloses an inner bag (Aoyama, 42, Fig. 3) which contains four sheets for walls (Aoyama, 23-26), with fold lines (Aoyama, 19-22) that extend up from the bottom to the top of the container, and

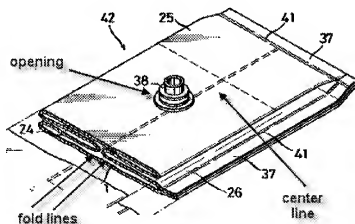
wherein the fold line of the third sheet in the initial state extends underneath the first opening to form a channel between the first and second sheet past the first opening (Aoyama, Fig. 6). It would have been obvious at the time of the invention to one of ordinary skill, using the teaching, suggestion, and motivation within the prior art, to modify the inner bag in the Olson combination container to have a fourth sheet forming a fourth wall for the inner bag and to have fold lines which extend up from the bottom to the top of the container, as suggested by Aoyama, "to thereby expand into a rectangular parallel piped shape to fit into the inside of said outer box when filled with liquid, and being folded flat when empty." (Aoyama, Page 1 Lines 34-35).



7. Regarding Claim 2, Olson in view of Aoyama discloses all the limitations substantially as claimed, as applied to amended claim 1 above; further, Olson teaches the container chamber is block-shaped (Olson, Fig. 9a).

8. Regarding Claim 7, Olson in view of Aoyama discloses all the limitations substantially as claimed, as applied to amended claim 1 above; further, Olson teaches the walled enclosure (**Olson, 11**) has a ceiling that delimits the container chamber (**Olson, Fig. 9f**) wherein a portion of the bag facing upwards in the filled state contains the second opening (**Olson, 6**).

9. Regarding Claims 9; Olson in view of Aoyama discloses all the limitations substantially as claimed, as applied to amended claim 1 above; further, Aoyama teaches the fold lines of the third and fourth sheets in the initial state extend underneath the first opening to form a channel between the first and second sheet past the first opening (**Aoyama**, Fig. 6).



10. Regarding Amended Claim 10, Olson in view of Aoyama discloses all the limitations substantially as claimed, as applied to amended claim 7 above; further, Aoyama teaches the first opening (**Aoyama, 38**) is close to the longitudinal center line of the first sheet; wherein the fold lines in the third and fourth sheet (**Aoyama, 39-40**) extend parallel to and close to the center line (**Aoyama, Fig. 6**).

11. Regarding Amended Claim 11, Olson in view of Aoyama discloses all the limitations substantially as claimed, as applied to amended claim 9 above; further, Aoyama teaches the distance between the fold line in the third and fourth sheet in the initial state is less than 80% of the diameter of the opening (**Aoyama**, Fig. 6).

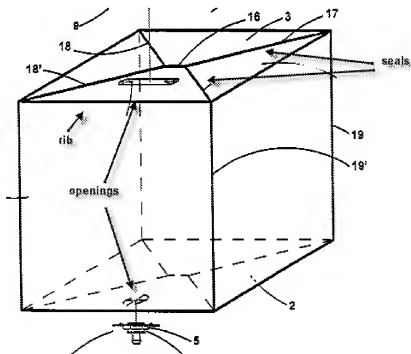
12. Regarding Amended Claims 12-13, Olson in view of Aoyama discloses all the limitations substantially as claimed, as applied to amended claim 9 above; further, Aoyama teaches the greatest distance to the periphery of the opening of the first opening is at least 5% of the maximum passage width of said opening, viewed transversely to the fold line of the third and fourth sheets (**Aoyama**, Fig. 6).

13. Regarding Amended Claims 15-16, Olson in view of Aoyama discloses all the limitations substantially as claimed, as applied to amended claim 14 above; further, Olson teaches a method wherein the bag is emptied via the first opening (**Olson**, 5, Col. 5 Lines 58-60).

14. Claims 3-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Olson in view of Aoyama as applied to amended claim 2 above, and further in view of Vallot (5,988,422).

15. Regarding Amended Claim 3, Olson in view of Aoyama discloses all the limitations substantially as claimed, as applied to claim 2 above. Although Aoyama teaches the first and second sheets have mutually parallel edges (**Aoyama**, Fig. 6) and that the sheets are connected along the tops and bottoms, the Olson and Aoyama combination does not expressly disclose the remaining claimed features of claim 3. However, the patent to Vallot – a container with openings – discloses a container

(Vallot, 1) with four side walls that are connected along the tops along an oblique seal (Vallot, 17, 18) to determine the diagonals of the bottom and top surface of the bag (Vallot, Fig. 1). It would have been obvious at the time of the invention to one of ordinary skill, using the teaching, suggestion, and motivation within the prior art, to modify the top and bottom of the inner bag in the Olson and Aoyama combination container to have connections along the top and bottom with oblique seals to locate the diagonals of the bag, as suggested by Vallot, as "flat fabrication produces welds and sachets of great strength, even during transportation over long distances." (Vallot, Col. 6 Lines 65-67).



16. Regarding Amended Claim 4, Olson in view of Aoyama in view of Vallot discloses all the limitations substantially as claimed, as applied to claim 3 above;

further, Vallot teaches top and bottom ribs/axes run between the outward pointing ends of the top and bottom oblique seals of the first sheet (**Vallot**, Fig. 1).

Olson in view of Aoyama in view of Vallot discloses the claimed invention except for the locations of the openings at the ribs/axes. It would have been obvious to one having ordinary skill in the art at the time the invention was made to locate the top and bottom openings near the location of the ribs/axes on the container, since it has been held that rearranging parts of an invention involves only routine skill in the art, and the location of the openings would not affect the utility of the invention as the openings allow for mounting of dispensing and filling devices (**Vallot**, Col. 4 Lines 1-7, and Lines 10-14). See *In re Japikse*, 86 USPQ 70.

17. Regarding Claims 5-6, Olson in view of Aoyama in view of Vallot discloses all the limitations substantially as claimed, as applied to amended claim 3 above; further, Vallot teaches the distances from the first and second openings to the respective bottom and top ribs/axes are at most 25% of the depth of the container chamber, wherein said distance at most 15% of said depth (**Vallot**, Fig. 1).

Response to Arguments

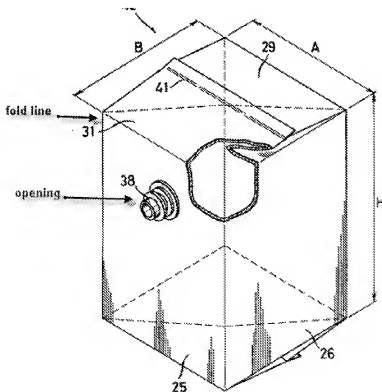
18. Applicant's arguments filed March 3, 2009 have been fully considered but they are not persuasive.

19. In response to applicant's argument that the claimed invention is novel over the cited references [**Remarks**, Page 7 Line 23 to Page 8 Line 5], the initial rejection of the independent claims were under §103(a) as obvious over Olson in view of Aoyama, and

not a §102 rejection of any single reference (**Non-Final Rejection** filed 12/4/2008, Paragraphs 5-7 and 15).

20. In response to applicant's arguments against the references individually [Remarks, Page 8 Line 6 to Page 9 Line 25], one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); and *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

21. In response to applicant's argument that the Aoyama reference fails to show certain features of applicant's invention [Remarks, Page 8 Lines 22-24], when the Aoyama liner is opened up (**Aoyama**, Fig. 7), the opening is located in front of a fold line.



Conclusion

22. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **ROBERT J. HICKS** whose telephone number is (571)270-1893. The examiner can normally be reached on Monday-Friday, 8:30 AM - 5:00 PM, EST. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571) 272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robert J Hicks/
Examiner, Art Unit 3781

/Anthony D Stashick/
Supervisory Patent Examiner, Art
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